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Diane Patrick  
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# HOUSE RESEARCH ORGANIZATION

## daily floor report


Tuesday, March 26, 2013  
83rd Legislature, Number 40  
The House convenes at 9 a.m.

Three bills have been set on the daily calendar for second reading consideration today:

HB 5 by Aycock	Public school accountability and graduation program changes	1
HB 281 by Lucio III	Oral statements about plea bargains by family of deceased peace officers	16
HB 677 by Geren	Dam safety regulation exemptions	21

The following House committees had public hearings scheduled for 8 a.m.: Insurance in Room E2.026; Natural Resources in Room E2.010; and Transportation in Room E2.012. The House Human Services Committee had a public hearing scheduled for 8:30 a.m. in Room E2.030.

The following House committees have public hearings scheduled for 10:30 a.m. or on adjournment: Criminal Jurisprudence in Room E2.016 and Environmental Regulation in Room E1.026. The House Licensing and Administrative Procedures Committee had a public hearing scheduled for noon or on adjournment in Room E1.010. The House Business and Industry committee has a public hearing scheduled for 1:30 p.m. or on adjournment in Room E2.014. The House Public Education Committee has a public hearing scheduled for 2 p.m. or on adjournment in Room E2.036.



Bill Callegari  
Chairman  
83(R) – 40

SUBJECT: Public school accountability and graduation program changes

COMMITTEE: Public Education — committee substitute recommended

VOTE: 10 ayes — Aycock, Allen, J. Davis, Deshotel, Dutton, Farney, K. King, Ratliff, J. Rodriguez, Villarreal

0 nays

1 absent — Huberty

WITNESSES: *(On original bill:)*  
For — David Anthony, Raise Your Hand Texas; Jennifer Bergland, Texas Computer Education Association; Nancy Blackwell, Macarthur Senior High School; Eddie Bland, Texas Association of Community Schools; Reece Blincoe, Brownwood ISD; Portia Bosse, Texas State Teachers Association; Keith Bryant, Texas Association of Mid-Size Schools; Barbara Cade, Paul Clore, Gregory-Portland ISD; HD Chambers, Barbara Guidry, Alief ISD; Jesus Chavez, Texas School Alliance; David Dominguez, Shelley Wells, Killeen ISD; Sandy Farris, Bryan ISD; Carol Fletcher, Texas Association of School Boards; Robert Floyd, Texas Music Educators Association and Texas Coalition For Quality Arts Education; Bruce Gearing, Dripping Springs ISD; Buck Gilcrease, Texas Rural Education Association; Eric Haugeberg, Belton ISD; Alexis Hernandez, Manor High School; Linda Holcombe, Texas Industrial Vocational Association; Sharon Kollaja, Corpus Christi Chamber of Commerce and Sterling Personnel; Ted Melina Raab, Texas American Federation of Teachers; Wayne Morren, Floydada ISD; Mike Motheral, Texas Association of Community Schools; Randy Reid, Keller ISD; Hector Rivero, Texas Chemical Council; Christy Rome, Texas School Coalition; Gonzalo Salazar, Los Fresnos CISD and South Texas Association of Schools; Michael Sandroussi, Craft Training Center of the Coastal Bend; Sara Solomon, Texas PTA; Haylee Uptergrove; Jim Van Zandt, Texas Music Administrators Conference; Thomas Wallis, Bryan ISD; Mary Ann Whiteker, Texas Association of School Administrators; Randy Willis, Central Texas School Board Association; and 19 individuals; (Registered, but did not testify: David D. Anderson, Arlington ISD; Kris Andrews, Center for Educator Development in Fine Arts; Kathy Barber, National Federation of Independent Business in Texas; Charles Chadwell, Round

Rock ISD; Melody Chatelle, United Ways of Texas; Frank Coachman, Texas Bandmasters Association; John Craft, Robert Muller, Killeen ISD; Walter Dansby, Hank Johnson, Fort Worth ISD; Harley Eckhart, Texas Elementary Principals and Supervisors Association; Terry Green, Family and Consumer Sciences Teachers Association of Texas; Caroline Hammond, Texas Cultural Trust; Sharon Lutz, Texas Choral Directors Association; Peter Martindell, Fort Bend ISD; Louann Martinez, Dallas ISD; Mike Meroney, Huntsman Corp. and Sherwin Alumina Co.; Gerald Mooney, Nancy Mooney, Jim Rumage, Banquete ISD; Scott Norman, Texas Association of Builders; Sheryl Pace, Texas Taxpayers and Research Association; Robin Painovich, Career and Technology Association of Texas; Beverly Schlegel, Texas Orchestra Directors Association; Rod Schroder, Amarillo ISD; Debbie Seeger, Corpus Christi ISD; Michael Willard, Goodwill Industries of Central Texas; Columba Wilson)

Against — Bill Hammond, Texas Association of Business; Drew Scheberle, Greater Austin Chamber of Commerce; Douglas Torres-Edwards

On — Yannis Banks, Texas NAACP; Jennifer Collier, Spring Branch ISD; Holly Eaton, Texas Classroom Teachers Association; Monty Exter, Association of Texas Professional Educators; Luis Figueroa, Mexican American Legal Defense and Educational Fund; John Fitzpatrick, Educate Texas; Sharon Kamas, Science Teachers Association of Texas; Duncan Klussmann, Spring Branch ISD; Janna Lilly, Texas Council of Administrators of Special Education; Sandra West, Science Teachers Association of Texas; Laura Yeager, Texans Advocating for Meaningful Student Assessments; and nine individuals; (Registered, but did not testify: Fidel Acevedo, League of United Latin American Citizens Council 4227; Priscilla Aquino Garza, Stand For Children Texas; Teresa Bosworth Green, Texas Science Education Supervisors Association; Kevin Brackmeyer, Manor ISD; Renee Byas, Houston Community College; Paul Gray, Texas Association of Supervisors of Mathematics; Patricia D. Lopez, Ph.D., Texas Center for Education Policy; Tom Pauken, Texas Workforce Commission; Robyn Shapiro, Texans Advocating for Meaningful Student Assessments; Angela Valenzuela, Texas Center for Education Policy; and seven individuals)

**BACKGROUND:**     **Student assessment.** In 1986, the Texas Education Agency (TEA) implemented the Texas Educational Assessment of Minimum Skills (TEAMS), the first statewide assessment that students were required to pass to be eligible to receive a high school diploma.

In 1990, the state adopted the Texas Assessment of Academic Skills (TAAS), which was designed to shift the assessment focus from minimum skills to academic skills. Passing the exit level tests in reading, writing, and mathematics at grade 10 was a requirement for students seeking to graduate from a public high school.

The Texas Assessment of Knowledge and Skills (TAKS) replaced TAAS as the primary statewide assessment program in 2003. TAKS was designed to measure more of the state-mandated curriculum. Students were required to pass exit-level tests in English language arts, mathematics, science, and social studies to graduate.

The 80th Legislature in 2007 enacted SB 1031 by Shapiro, replacing the TAKS assessments in grades 9-12 with 15 end-of-course (EOC) assessments in 12 different courses, beginning with the class entering grade 9 in the fall of 2011. Those courses are: algebra I and II; geometry; biology; chemistry; physics; English I, II, and III; world geography; world history; and U.S. history.

The 81st Legislature in 2009 enacted HB 3 by Eissler, which requires TEA to develop assessments in a manner that allows the measurement of performance across grades, culminating in college readiness performance standards in algebra II and English III. In order to graduate, students must achieve a cumulative score corresponding to satisfactory performance in each core subject (English, mathematics, science, and social studies) on all administered EOC exams. For example, scores for biology, chemistry, and physics must average to a satisfactory score to meet the science requirement. A student must achieve a minimum score determined by the commissioner for an EOC exam score to count toward a cumulative score.

A student who does not perform satisfactorily on an end-of-course exam must retake the exam. If the student's performance does not meet college readiness performance standards on the algebra II or English III EOC exam, the student may take the exam again.

In 2012, following the requirements of HB 3, the State of Texas Assessments of Academic Readiness (STAAR) EOC exams were administered under initial passing standards slated to increase with subsequent administrations.

**High school graduation programs.** There are three high school graduation plans under current law: minimum, recommended, and advanced. The minimum plan has the fewest requirements in terms of courses and EOC exams that students must successfully complete for graduation. Students following the recommended and advanced programs must complete four years of mathematics, science, English language arts, and social studies. Students need two credits of a language other than English to graduate under the recommended program and three under the advanced program. Students need six elective credits to graduate under the recommended program and five under the advanced program. A student must achieve at least the minimum score determined by the commissioner of education for English III and algebra II EOC exams to graduate under the recommended or advanced programs.

**Public school accountability.** In 1993, the Legislature mandated the creation of the public school accountability system to rate school districts and evaluate schools. The system relied on an existing student data collection system, the state-mandated curriculum, and the TAAS assessment system. The accountability standards were designed to phase in increasingly higher expectations for districts and campuses. The state raised expectations for acceptable performance each year between 1995 and 2001.

This accountability system remained in place through the 2001-02 school year. A new rating system based on the TAKS was developed during 2003. Districts were rated as exemplary, recognized, academically acceptable, or academically unacceptable. Campuses were rated as exemplary, recognized, acceptable, or low-performing.

There were no accountability ratings in 2012 as the state transitioned to STAAR. The commissioner of education is developing a new accountability system for the 2012-13 school year.

**DIGEST:**

CSHB 5 would institute a new standard course of study for high school students and reduce the number of EOC exams public high school students were required to pass in order to graduate. The bill also would establish a

new accountability ratings system evaluating schools on academic performance, financial performance, and community and student engagement.

CSHB 5 would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

**High school graduation programs.** CSHB 5 would replace the minimum, recommended, and advanced high school program with a 24-credit foundation high school program, beginning with the 2014-15 school year. The curriculum requirements for the foundation program would be:

- four credits in English language arts, including English I, II, and III, and one other advanced English course;
- three credits in mathematics, including algebra I, geometry, and an advanced mathematics course;
- three credits in science, including biology, an advanced science course, integrated physics and chemistry, or an additional advanced science course;
- three credits in social studies, including U.S. history, one-half credit in government, one-half credit in economics, and world geography or world history;
- two credits in a foreign language;
- seven elective credits;
- one fine arts credit; and
- one physical education credit.

A student could satisfy the foreign language requirements by substituting two credits in computer programming. A student served by special education could satisfy the foreign language requirements by substituting credits in other specified coursework.

A student would be allowed to participate and receive credit in a fine arts program not provided by the school district.

Students could earn endorsements on their diplomas in any of five areas: STEM (science, technology, engineering, and math), business and industry, public services, arts and humanities, and multidisciplinary studies.

Students could earn a distinguished level of achievement designation by completing the requirements of the foundation program and at least one endorsement, while also earning four credits of science and four credits of math, including algebra II. Students also could earn an acknowledgement for outstanding performance in a dual-credit course; on a college advanced placement test or international baccalaureate exam; on the PSAT, the ACT-Plan, the SAT, or the ACT; or for earning a nationally or internationally recognized business or industry certification or license. The distinguished level of achievement, endorsement, and performance acknowledgment would be listed on diplomas and transcripts.

The commissioner of education would be required to adopt a transition plan for implementing the foundation high school program. Students who entered the ninth grade before the 2014-15 school year would be allowed to choose the foundation plan or remain on the current minimum, recommended, or advanced plans.

All high school graduates would be eligible to apply for admission to Texas public four-year universities, and those who met additional academic achievement requirements would be eligible to receive a TEXAS grant. Only students completing the distinguished level and graduating in the top 10 percent of their class would be eligible for college admission under the top 10 percent automatic admissions law.

CSHB 5 would require the State Board of Education (SBOE) to designate the specific courses required under the new foundation program and would set out the specific number of completed credits for various subjects and the number of elective credits. The SBOE also would develop the curriculum requirements for each endorsement with the participation of educators and business and industry representatives.

Districts would have local flexibility to develop courses outside the required curriculum without obtaining SBOE approval if certain conditions were met, which include partnering with an institution of higher education and local business and community leaders. The courses would have to prepare students for technical training or college readiness. One credit in a local course could be substituted for the required physical education credit by a student who could not participate in physical activity because of disability or illness.

Beginning in the 2014-15 school year, counselors at elementary, middle school, and high school levels would be required to provide students and their parents information about preparing for postsecondary education and financial aid availability. Students in their first year of high school would receive information from counselors about the advantages of earning a diploma endorsement, performance acknowledgement, and distinguished level of achievement.

**Student assessment.** For students entering grade 9 during the 2011-12 school year or later, CSHB 5 would reduce from 15 to five the number of STAAR EOC tests that students had to pass to graduate. Students would be able to meet their graduation requirements by passing English II (both reading and writing), algebra I, biology, and U.S. history.

The bill would eliminate EOC testing in geometry, chemistry, physics, English I, world geography, and world history. TEA would be required to adopt EOC exams for algebra II and English III, which students could opt to take. The Texas Higher Education Coordinating Board (THECB) would have to ensure those tests were capable of measuring college readiness. Scores from those tests would not be used in determining graduation eligibility or in the accountability system.

CSHB 5 would eliminate the requirement that EOC test scores count for 15 percent of a student's overall grade and allow districts to adopt local policies for factoring test scores in final course grades. It also would eliminate the requirement that students earn a cumulative score corresponding to satisfactory performance in all EOC exams in each core subject area. Instead it would require a student to earn a score on a 100-point scale corresponding to satisfactory performance. Students who failed to achieve a score requirement on an EOC test could retake the test but would not be required to do so.

Students would be allowed to satisfy EOC test performance requirements through satisfactory performance on nationally recognized norm-referenced assessments such as advanced placement, SAT, and ACT exams. A student who failed to perform satisfactorily on one of those exams could retake the test or take the appropriate EOC exam. The commissioner of education would be required to determine a method by which a student's satisfactory performance on the PSAT or the ACT-Plan could satisfy the EOC exam requirements. However, a student who failed the PSAT or ACT-Plan would have to take the appropriate EOC exam.



The admission, review, and dismissal committee of a student served by special education would determine whether the student was required to achieve satisfactory performance on EOC tests to be eligible to receive a high school diploma.

Students who completed grade 11 but were unlikely to pass the required exams would have to enroll in a corresponding content-area college preparatory course. Students could use their scores on the EOC exam for the college preparatory course to satisfy the graduation requirement.

**Public school accountability.** CSHB 5 would establish a new three-category rating system evaluating schools on academic performance, financial performance, and community and student engagement.

Schools and districts would be rated using letter grades of A, B, and C to reflect acceptable performance, and F to reflect unacceptable performance. TEA would be required to release all three ratings at the same time each year by August 8. Each year by August 31, TEA would be required to post online the various letter performance ratings, financial accountability ratings, and distinction designations awarded to each district and open-enrollment charter school.

*Academic performance.* The accountability system for academic performance would have to include at least three additional indicators of student achievement beyond certain test results, dropout rates, and high school graduation rates, with weight given to non-test-based indicators to the greatest extent possible.

Districts and campuses could earn academic distinction designations for outstanding performance in attaining postsecondary readiness based on several factors, including the number of students who perform satisfactorily or show annual improvement on EOC exams. Campuses also could earn several different academic distinction designations associated with being in the top 25 percent in the state in annual improvement, closing achievement gaps, or high performance in core content areas.

The percentage of graduating students who meet the foundation course requirements, the distinguished level of achievement, and each diploma endorsement would serve as additional performance indicators for reporting purposes.

CSHB 5 would require the commissioner to conduct special accreditation investigations when excessive numbers of eligible students failed to complete an advanced mathematics or other advanced course.

*Financial performance.* The financial accountability rating system for school districts and open-enrollment charter schools would be developed by the commissioner of education in conjunction with the comptroller by March 1, 2015. It would assign a point value to each indicator to be used in a scoring matrix. One indicator would measure future financial solvency of a district or charter school. The commissioner would be required to evaluate the financial indicators at least once every three years. Before assigning a final rating, the commissioner would be required to assign a preliminary rating and consider additional information submitted by a district or charter school. Districts or charter schools assigned a failing rating under the financial accountability rating system would be required to submit a corrective action plan.

*Community and student engagement.* Each school district would evaluate its own performance and the performance of its campuses based on criteria developed by the commissioner of education in conjunction with a local committee at each school district. This new evaluation category would include measures related to:

- fine arts;
- wellness and physical education;
- community and parental involvement;
- the 21st Century Workforce Development program;
- the second language acquisition program; and
- compliance with statutory reporting and policy requirements.

**SUPPORTERS  
SAY:**

CSHB 5 would bring needed balance to excessive state-mandated testing. The current system costs too much in time, money, and resources that should be dedicated to classroom instruction rather than test preparation. Over-testing threatens the futures of high school students, most of whom now must pass 15 EOC exams to be eligible to graduate, as opposed to four exit-level tests under the TAKS program.

The bill also would make changes to the high school curriculum that maintain rigor while providing students flexibility to pursue college or career interests. This would meet the growing need of Texas employers for

skilled workers ready to enter technical trades, such as welding, pipefitting, and computer animation. Finally, the bill would broaden the accountability system to lessen reliance on test scores and provide a better understanding of overall school performance.

While the commitment of Texas to public school accountability has certainly yielded gains in student achievement over the years, the burden created by excessive testing has grown too large. CSHB 5 would address the excesses of the state's testing and accountability system while maintaining high standards and expectations for Texas students.

**Student assessment.** CSHB 5 would reduce the high-stakes nature of EOC exams in several ways. It would lower the number of tests a student must pass to graduate from 15 to five. Even under these reduced requirements, the bill would maintain strict assessment requirements for graduation compared to other states, 42 of which require three tests or fewer and 25 of which require none.

By ending the requirement that EOC exam scores count for 15 percent of a student's grade, the bill would give districts local control over how to incorporate EOC scores into course grades. Last spring, in response to outcry from parents and school boards across the state, TEA allowed districts to delay the implementation of the "15 percent requirement," a policy retained by the current commissioner of education. CSHB 5 appropriately would remove this requirement from statute, which currently threatens the class ranks and grade point averages of high-achieving students if they perform poorly on any of the 15 EOC tests.

The emphasis on testing in the STAAR program narrows the curriculum and dampens the joy of learning with "drill-and-kill" exercises. Teachers and students are losing valuable instruction time taking practice tests to prepare for the high-stakes exams. CSHB 5 would allow schools to spend more of that time on classroom discussions and hands-on projects, which would spark students' curiosity and enrich their learning experiences.

At a time when the state is attempting to increase the rigor of academic work in high schools, the current testing regime contains a perverse incentive for students to switch to the minimum plan because it does not require satisfactory performance on all 15 EOC exams as a requirement for graduation. The initial round of STAAR testing in 2012 placed about 30 percent of sophomores at risk of not graduating. In addition, only 46

percent of ninth-grade students would have passed their English I reading exams and only 39 percent would have passed their algebra I exams if the state had not delayed implementing passing standards for the first year of STAAR. CSHB 5 would move the state assessment program away from policies that encourage test-fatigued students to take less demanding courses of study or even to drop out altogether.

The bill would save millions of dollars in testing costs. Texas is spending \$468 million over four years with its testing contractor, far more than other states. That money would be better used to hire more teachers and offer stronger academic programs. By reducing or making optional the number of EOC exams TEA had to develop and administer, CSHB 5 would result in savings of \$12.1 million annually, according to the fiscal note.

**High school graduation programs.** The bill would place all students on one foundation plan for graduation while allowing multiple pathways for students to pursue their career interests. Students are more engaged when they can tailor their studies to their interests and take courses that apply to their career choices.

The growing Texas economy needs skilled workers to work in the energy industry and other sectors that offer high-paying jobs that do not require a college degree. Not all students will go to college and they should be informed about other options for financially rewarding work. By eliminating the minimum graduation plan, the bill would ensure that all graduates were ready for postsecondary education, including community college, technical training, or four-year colleges and universities. CSHB 5 also would allow school districts to partner with community colleges and local businesses to develop local courses that meet area workforce needs.

The overall credit requirement for graduation would increase from 22 to 24 credits, and students could choose to take more challenging courses and earn endorsements in any of five areas, including multidisciplinary studies. By requiring that students earn a distinguished level of achievement designation to be eligible for college admission under the top 10 percent law, CHSB 5 would prevent students from taking less rigorous coursework in an attempt to rank in the top 10 percent of their graduating classes.

Current requirements that students on the recommended plan take four years of mathematics, science, English and social studies — known as the “4x4 plan,” — are inflexible. Career-training classes such as engineering, robotics, computer animation, and accounting can be just as rigorous as traditional academic courses. While many students struggle to pass algebra II, not all need to master this discipline for success in their post-high school lives. Students who wished to take algebra II still could do so under CSHB 5, and it would remain a required course for students to earn a distinguished achievement designation on their diplomas.

**Public school accountability.** The approach to accountability under CSHB 5 would paint a fairer, more comprehensive picture of campus and district performance while reducing the emphasis on testing. The current system puts too much focus on the worst performing subgroup, allowing a few students to potentially affect the rating of an entire campus. Using the familiar letter grades of A, B, C, and F would make it easier for the public to understand how a district or campus was performing.

The new accountability system under CSHB 5 would rate district and campus academic performance on many factors besides test scores. The new rating categories of financial accountability and community and student engagement would give the public a much better overall understanding of how schools and districts were performing. The bill would strengthen public investment in the system by involving local groups of parents and community and business leaders in decisions about what criteria should be used to evaluate their schools.

**OPPONENTS  
SAY:**

CSHB 5 would reduce academic rigor and lower expectations for Texas students. Texas has been at the vanguard of public school accountability for decades, a commitment that has raised academic performance and narrowed achievement gaps among student groups. The performance of Texas students continues to improve compared to their peers nationally in eighth grade math, and graduation rates have increased steadily to almost 86 percent in 2011.

Nevertheless, too many high school graduates are not ready for college-level courses or the highly technical jobs of the future. Texas needs a skilled workforce to meet the demands of the 21st-century economy, and rigorous academic standards are the best way to prepare the state’s workforce for this challenge. By watering down the 4x4 curriculum and

STAAR EOC assessments that are designed to increase college and workforce readiness, CSHB 5 would take a step in the wrong direction.

**Student assessment.** Barely one year after the implementation of STAAR, it is too soon to retreat from the higher-level critical thinking skills that the new tests are designed to measure. The EOC exams are being phased in, and teachers already are using the results to better prepare students for future tests. Each time the state has adopted new assessments, the initial scores were low, but the data show students have improved their performance over time.

The EOC exams in CSHB 5 are designed for freshman- and sophomore-level courses, and would not be good measures of college readiness. Without a requirement that students pass advanced courses such as algebra II and physics, there would be little incentive for students to study these challenging subjects.

**High school graduation programs.** Rigorous graduation requirements are critical to helping more students enter and succeed in college and career. Challenging coursework in high school is the best predictor of student success at the community college and university levels. The 4x4 graduation plan ensures that all students are pursuing a course of study that should prepare them for success in college or the workforce.

The Higher Education Coordinating Board has estimated that 2,652 additional students would not be college-ready because of the graduation plan changes in CSHB 5. The cost in state higher education funding to remediate these students is estimated at \$1 million, not to mention the further \$1.8 million those students are projected to incur in additional tuition and fees.

Loosening graduation standards to allow students to pursue more career training could lead to minority students being steered disproportionately into the career option and away from the college track. This could have a long-term impact for these students and for the state because minority students constitute the majority of the state's public school student population. Studies have shown that people with college degrees earn significantly more over their lifetimes than those without a degree.

The state's default curriculum should include algebra II, while allowing some students to opt out of it. Many jobs of the future will require high-

level mathematics skills, and now is not the time to undo the requirement that students take four years of mathematics. A course such as algebra II teaches higher-order thinking and critical reasoning skills that prepare students for postsecondary education, regardless of what they decide to pursue after high school.

**Public school accountability.** The existing accountability system is designed to ensure that public schools are fulfilling their core mission of teaching the state-mandated curriculum. Most parents are familiar with the district and campus rating system and use the designations to hold local school officials responsible.

OTHER  
OPPONENTS  
SAY:

EOC exams should be limited to three in the core subjects of mathematics and English language arts. Better yet, Texas should do away with all EOC exams and rely on national tests such as the SAT and ACT. Student gains on the TAKS over the past decade have not translated into similar improvements on national norm-referenced exams such as the SAT and ACT. There is no reason to believe that tweaking the new STAAR program would have better results.

Reducing the testing burden on Texas high school students is a good idea, but over-testing in grades 3 through 8 also should be addressed.

NOTES:

CSHB 5 differs from the bill as introduced in several ways. Unlike HB 5 as filed, the committee substitute would:

- add a third science course for the foundation diploma;
- reduce the number of electives from eight to seven;
- allow world geography or world history for the third social studies credit;
- allow students to receive credit in a fine arts program not provided by the school district;
- add a distinguished level of achievement graduation program and make those students eligible for automatic admissions under the top 10 percent law;
- make students who completed the foundation diploma and certain other requirements eligible for TEXAS grants;
- drop the letter grade D from the accountability ratings; and
- require three indicators in addition to STAAR results and graduation rates for evaluating school performance.

According to the Legislative Budget Board (LBB), CSHB 5 would result in a savings of \$25.1 million in fiscal 2014-15. The state would save money from eliminating EOC exams but would face higher costs for collecting financial data and for additional students needing college remedial courses. In its analysis of the bill as introduced, the LBB projected savings of \$27.9 million in fiscal 2014-15, but has since increased its estimate of how much data collection for the financial accountability system would cost.



**SUBJECT:** Oral statements about plea bargains by family of deceased peace officers

**COMMITTEE:** Criminal Jurisprudence — favorable, without amendment

**VOTE:** 8 ayes — Herrero, Carter, Burnam, Canales, Leach, Moody, Schaefer, Toth  
0 nays  
1 absent — Hughes

**WITNESSES:** For — Charley Wilkison, Combined Law Enforcement Associations of Texas; (*Registered, but did not testify:* Lon Craft, Texas Municipal Police Association; Daniel Earnest, San Antonio Police Officers Association; Washington Moscoso, San Antonio Police Officers Association; Morris Munoz, Bexar County Sheriff's Office; Jimmy Rodriguez, San Antonio Police Officers Association)  
  
Against — (*Registered, but did not testify:* Rebecca Bernhardt, Texas Defender Service)  
  
On — (*Registered, but did not testify:* Shannon Edmonds, Texas District & County Attorneys Association)

**BACKGROUND:** Code of Criminal Procedure, art. 56.08(b-1), requires the state to give crime victims, their guardians, or close relatives of a deceased victim notice of the existence and terms of any plea bargain agreement to be presented to the court, as far as reasonably practicable. Under art. 26.13(e), the court, before accepting a guilty or nolo contendere plea, must ask whether the prosecutor has given the required notice.  
  
Code of Criminal Procedure, art. 56.03, provides for the recording and use of victim impact statements in criminal prosecutions. These statements, written on a standard form, collect from the victim, a victim's guardian, or a close relative of a deceased victim information about the impact of the offense on the victim, including economic, physical, and psychological effects. The statements are disclosed only after a finding of guilt or an order of deferred adjudication and are inspected by the court and the defense before the imposition of a sentence.

Under Code of Criminal Procedure, art. 42.03, sec. 1(b), a victim, a victim's guardian, or a close relative of a deceased victim may appear in person after a sentence is pronounced and present a statement about the offense, the defendant, and the effect of the offense on the victim.

**DIGEST:**

HB 281 would allow one immediate family member of a deceased peace officer who died as the result of alleged criminal conduct to make an oral statement to the court about the terms of a plea agreement, including whether the deceased officer's family supported or opposed the terms of the agreement. The court would be required to consider this statement before sentencing.

The defense would have the opportunity to:

- cross-examine the person making the statement;
- comment on the statement; and
- introduce testimony or other information alleging a factual inaccuracy in the statement, with the approval of the court.

The court would be required to inform the family member of the defendant's rights before the family member made the statement.

Prosecutors would have to give the family notice of the existence and terms of a plea agreement and notice of an immediate family member's right to make an oral statement. Under the bill "immediate family member" would mean an individual related to the peace officer within the second degree by affinity or consanguinity.

Consideration of this oral statement by the court would be in addition to victim statements under Code of Criminal Procedure, arts. 56.03 and 42.03.

The bill would take effect September 1, 2013, and would apply only to a plea of guilty or nolo contendere entered on or after that date.

**SUPPORTERS  
SAY:**

HB 281 is needed to give the families of deceased peace officers a greater sense of fairness and inclusion in the criminal justice system and would send the message that these families are an important part of the criminal justice process. The killing of a peace officer is a heinous crime that shocks communities and families and warrants unique consideration in the

criminal justice process.

Under the current system, families of deceased peace officers do not have a chance to comment on a plea bargain until after it is final. Many victims, upon learning about an accepted plea bargain, are shocked to learn that they will not have an opportunity to see justice served in the courtroom. The affected families deserve more respect and a voice in the plea bargain process.

Allowing the family member of a deceased peace officer to comment on a plea agreement before it was accepted would serve the interests of justice. The death of a peace officer in the line of duty is an affront to society and impacts the entire community. Even while off duty, peace officers have responsibilities above and beyond those of lay citizens, and being off duty does not relieve them of these heightened expectations nor mitigate the dangers to which they are regularly exposed. The death of a peace officer is a loss to the community that peace officer serves.

Ensuring that these victims' voices were heard at a crucial stage in the process would complement the current requirement that the judge ask for a copy of the victim impact statement before accepting a plea bargain agreement. Both are reasonable requirements designed to ensure that a victim's interests are considered.

Family members could choose not to make a statement if they felt uncomfortable submitting to cross-examination. They still could submit a written victim impact statement and make a statement after sentencing. The chance to cross-examine and challenge factual inaccuracies would ensure that defendants' confrontation rights were protected and that the prosecution did not benefit unfairly from the oral statement.

Judges often accept plea agreements in the interest of judicial economy, even though they are not required to do so. This bill would give judges more complete information to consider in these special cases that affect the community, particularly in cases where a plea agreement may not serve the interests of justice.

**OPPONENTS  
SAY:**

HB 281 is unnecessary because the interests of families of deceased peace officers, like those of all crime victims, already are sufficiently represented in several ways:

- the prosecutor must consider the victim impact statement when entering into the plea bargain agreement;
- the judge is required to receive a copy of the victim impact statement before accepting a plea agreement; and
- victims, their guardians, or close relatives of a deceased victim receive notice of plea bargains if reasonably practical.

Current requirements ensure that the victim's story is part of the balancing of interests before a plea bargain agreement is accepted by the judge. The statement allowed by this bill would amount to a victim opinion statement, rather than a victim impact statement. To date, victims of crime have been barred from testifying as to their opinion on a suitable sentence, and HB 281 would change that practice by inappropriately introducing victim opinion testimony into the sentencing process.

Adding the requirement to give notice regardless of whether it was reasonably practical in one specific kind of case is unnecessary and could place an unreasonable burden on the state. Requiring prosecutors to tell family members of deceased peace officers about plea bargain agreements, even if not reasonably practical, also could unnecessarily delay cases if family members were not readily available.

The prosecutor and the judge need to represent the state's interests, which sometimes are best achieved through a plea bargain agreement. Plea agreements are an important part of the legal process and often reflect the best outcome for the society affected by the crime. This bill could undermine the state's authority to negotiate and could derail carefully crafted plea agreements by putting pressure on judges. Victims of crime, including the family members of deceased peace officers, rarely are in a position to understand the legal strengths or weaknesses of a case or what an appropriate disposition for a crime would be in their jurisdiction. HB 281 would create a tool for understandably emotional family members to disrupt or prevent a plea agreement that could be in the best interests of justice.

This is particularly important in capital cases, since defendants rarely, if ever, plead to the death penalty. If the oral statements made under HB 281 were to discourage plea agreements, this would tilt the balance of these cases away from life sentences and toward the death penalty.

It also would be inappropriate to raise the voice of the family members of

deceased peace officers above those of all other crime victims. Allowing family members of deceased peace officers to make an oral statement even when the peace officer was killed while off duty inappropriately would elevate the families of peace officers above the families of other victims. Victims deserve to have their interests treated equally, and allowing the family of deceased police officers to make an extra oral statement would create an inequality.

**OTHER  
OPPONENTS  
SAY:**

This bill should apply to all victims, their guardians, or their families, not just the family members of deceased peace officers. All victims of crime are affected by the offenses committed against them and should have the opportunity to have their voices heard in this manner to serve the interests of justice.

**SUBJECT:** Dam safety regulation exemptions

**COMMITTEE:** State Affairs —favorable, without amendment

**VOTE:** 9 ayes — Cook, Giddings, Craddick, Farrar, Frullo, Geren, Harless, Huberty, Smithee

0 nays

4 absent — Hilderbran, Menéndez, Oliveira, Sylvester Turner

**WITNESSES:** For —Ralph Duggins; Gary Joiner, Texas Wildlife Association (*Registered, but did not testify*: William Thomas Duggins; Billy Howe, Texas Farm Bureau; Marissa Patton, Texas and Southwestern Cattle Raisers Association; John J. Vay, small dam owners; Josh Winegarner, Texas Cattle Feeders Association.)

Against — None

On — (*Registered, but did not testify*: Warren Samuelson, Texas Commission on Environmental Quality)

**BACKGROUND:** Under Water Code, sec. 12.052, subsecs. (e-1) and (e-3), certain dams are exempted from the Texas Commission on Environmental Quality's (TCEQ's) dam safety requirements until August 31, 2015. To qualify for an exemption, a dam must:

- impound 500 acre-feet of water or less;
- have a low- or significant-hazard classification;
- be located on private property in a county with a population of 215,000 or less; and
- not be located within a city.

TCEQ defines low-hazard dams as those that if breached would result in no loss of life and little economic damage. Significant-hazard dams are defined as those that, if breached, could result in the loss of up to six lives and economic loss, including damage to isolated homes, major roads, and utilities.

According to 2010 U.S. Census data, eight Texas counties have a population between 215,000 and 350,000: Bell, Brazoria, Galveston, Jefferson, Lubbock, McLennan, Nueces, and Webb.

**DIGEST:** HB 677 would change the criteria for exempting a dam from TCEQ dam safety requirements under Water Code, sec. 12.052 (e-1) to include those located in counties with a population of less than 350,000.

The bill would remove the provision establishing that the exemptions expire on August 31, 2015.

The bill would take effect September 1, 2013.

**SUPPORTERS SAY:** HB 677 would increase the number of counties with dams eligible for exemptions from certain TCEQ regulation and remove the expiration date for the exemptions. These common-sense, cost-saving mechanisms would ensure that rural economic interests were not undermined and dam safety protocols in the state's larger urban counties were maintained.

TCEQ regulation of low- and significant-hazard dams in rural areas is burdensome and expensive, costing dam owners upwards of \$100,000 in engineering studies and infrastructure improvements that provide little, if any, additional public protection. TCEQ's dam safety program puts a substantial burden on the financial resources of landowners and ranchers who maintain small impoundments of 500 acre-feet or less to support livestock and agriculture. Both TCEQ and the engineering firms use improbable catastrophic rainfall events in modeling for dam safety.

Although the bill would raise the population exemption for counties to 350,000, most of the dams in these counties are low-risk dams. Only nine of the dams in these counties fall within the significant-risk classification.

If an area had significant downstream development from a dam, TCEQ could reclassify the dam as high hazard, making the dam no longer exempt from TCEQ dam safety regulations.

**OPPONENTS SAY:** HB 677 would exempt from the state's dam safety program nine additional dams classified as significant-hazard dams, which are defined as dams that, if breached, could threaten the lives of up to six people or cause property damage.

The bill also would remove the 2015 expiration date for exemptions, which would result in a total of 216 significant-hazard dams statewide — 57 of which TCEQ has deemed to be in poor condition — being exempted indefinitely from the state's dam safety program.

While the TCEQ dam safety program needs improvements to protect both public safety and the financial interests of dam owners, the Legislature should continue to develop a comprehensive solution, rather than provide a blanket exemption. A comprehensive approach should include studying exempted dams during the next interim to determine whether they pose a risk to downstream interests and working with local officials on issues related to floodplain management, dam safety, and downstream development.

NOTES:

The identical companion bill, SB 1271 by Eltife, was scheduled for a public hearing today in the Senate Natural Resources Committee.